IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 230 of 2004

Uttaranchal Power Corporation Ltd.
& another. …….. **Appellants**

Versus

M/s Jai Prakash Associates Ltd.
& another. …… **Respondents**

&

A.O. No. 232 of 2004

Uttaranchal Power Corporation Ltd.
& another. …….. **Appellants**

Versus

M/s Jai Prakash Associates Ltd.
& another. …… **Respondents**

Mr. Ranjit Saxena / Mr. Vinay Kumar, learned counsel for the appellants.
Mr. V.K. Kohli, Senior Advocate assisted by Mr. I.P. Kohli, Advocate on behalf of respondent No.1.

Hon'ble P. C. Verma, A.C.J.
Hon'ble P.C. Pant, J.

The appellants are aggrieved by the orders dated 07.06.2004 passed by the learned Civil Judge (Sr. Division), Chamoli in O.S. No. 42 of 2003 and O.S. No. 43 of 2003, whereby the applications of the respondent No.1 under order 39 Rule 1 & 2 C.P.C. were allowed staying the recovery proceedings initiated by the appellants against the respondents No.1.

Heard Mr. Ranjit Saxena, learned counsel on behalf of the appellants and Mr. V.K. Kohli, Senior Advocate on behalf of the respondent No.1 at length and perused the order dated 07.06.2004, which is impugned in this appeal.

In our view, the learned Civil Judge ought to have taken cash security by asking the deposit of the same to be made with the Uttaranchal Power Corporation in the interest of justice as the Power

Corporation cannot run on the bank guarantee in view of the law laid down by the Apex Court in Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs Dunlop India Ltd. & others reported in 1985 (1) Supreme Court Cases 260, wherein it has been held that furnishing a bank guarantee does not meet the ends of justice. No government business or for that matter no business of any kind can be run on mere bank guarantee. Liquid cash in necessary for the running of a Government as indeed any other enterprise.

Therefore, we modify the order dated 07.06.2004 passed by the learned Civil Judge (Sr. Division) and provide that further recovery proceedings initiated against the respondent No. 1 shall remain stayed only if the respondent No.1 deposits 50% of the amount shown the recovery citation issued by the Collector, in the office of the Collector, Chamoli, which shall be transferred by the Collector to the Executive Engineer, Uttaranchal Power Corporation. The deposit shall be made within a period of one month form today, in default of which, the entire amount shall be recovered and the stay order shall stand vacated. Learned Civil Judge (Sr. Division), Chamoli is directed to decide the suit No.42 of 2003 and suit No. 43 of 2003 within a period of six months form the date of production of certified copy of this order and in case, the plaintiff's suits are allowed, the amount deposited by the respondent No.1 (plaintiff) shall be adjusted towards further dues by the Uttaranchal Power Corporation.

With the aforesaid observations, both the appeals are disposed of. No. order as to costs.

(P.C. Pant, J.) **(P. C. Verma, A. C. J.)**

Dt. 23.7.2004
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